THE STATE OF MICHIGAN
COURT OF CLAIMS

DAN RYAN, PAUL DRISCOLL, JOELLEN M. PISARCZYK, and MYRON ZOLKEWSKY,

Plaintiffs,

and

THEGATEWAYPUNDIT.COM,

Intervening Plaintiff,

v.

JOCELYN BENSON, in her official capacity as the Michigan Secretary of State,

Defendant.

Civil Action No. 20-000198-MZ

HON. CHRISTOPHER M. MURRAY

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**Pro hac vice motion forthcoming*

[12/08/2020] MOTION OF THEGATEWAYPUNDIT.COM TO INTERVENE AS PLAINTIFF

TGP Communications, LLC, d/b/a THEGATEWAYPUNDIT.COM ("TGP") respectfully requests that it be permitted to intervene as Plaintiff in this matter under Michigan Court Rule 2.209.

In support, TGP relies on the attached brief. Attached as Exhibit A is TGP's Proposed Complaint-in-Intervention, in accordance with Michigan Court Rule 2.209(C)(2).

Due to the urgency of this case, TGP asks the Court to promptly issue its ruling on this Motion. If this Motion is granted, Intervening Plaintiff will file immediately with the Court a properly verified complaint.

Respectfully submitted,

Dated: December 8, 2020

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**Pro hac vice motion forthcoming*

PROOF OF SERVICE

John C. Burns certifies that on the 8th day of December 2020, he served a copy of the above document in this matter on all counsel of record and parties *in proper* via email.

/s/ *John C. Burns*
JOHN C. BURNS

EXHIBIT A

THE STATE OF MICHIGAN
COURT OF CLAIMS

DAN RYAN, PAUL DRISCOLL, JOELLEN M. PISARCZYK, and MYRON ZOLKEWSKY, Plaintiffs, and THEGATEWAYPUNDIT.COM, Intervening Plaintiff, v. JOCELYN BENSON, in her official capacity as the Michigan Secretary of State, Defendant.	Civil Action No. 20-000198-MZ HON. CHRISTOPHER M. MURRAY

[PROPOSED] VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Intervenor-Plaintiff TGP Communications, LLC d/b/a THEGATEWAYPUNDIT.COM ("TGP") files this Verified Amended Complaint for Declaratory Relief against Defendant JOCELYN BENSON, in her official capacity as the Michigan Secretary of State, and allege as follows:

NATURE OF THE CASE

1. Plaintiffs brought this action against Defendant Jocelyn Benson ("Benson"), Michigan's Secretary of State, alleging Defendant failed to exercise her duty to regulate the conduct of the 2020 general election by failing to prohibit partisan interest groups from funneling grant money to certain local jurisdictions. In particular, Plaintiffs allege that a private organization with a partisan agenda, the Center for Tech and Civic Life (CTCL), awarded grants to a select group of Michigan election jurisdictions in an effort to influence the outcome of the

November 3, 2020 general election. The complaint alleges these private funds were used to pay for printing and distributing absentee ballots and for ballot drop-boxes. The ballot boxes allegedly secured by this funding do not, according to Plaintiffs, comply with the requirements mandated by Michigan election law. TGP joins and likewise makes these allegations.

2. Specifically, Plaintiffs assert – and TGP joins and likewise asserts – that Defendant permitted CTCL to provide funding contrary to MCL 168.666(a) and MCL 168.669(b), and did so primarily in electoral jurisdictions that favors the Democratic Party over the Republican Party. By permitting this, Defendant improperly favored Democratic voters over Republican voters.

3. Plaintiffs ask this Court – and TGP joins and likewise asks – to declare that Defendant violated Const 1963 art 2, § 4's "purity of elections" clause, as well as Const 1963, art 1, § 2 (equal protection), by allowing certain jurisdictions to accept private funds for use in the 2020 general election, while other jurisdictions that have not received grant funding were forced to rely upon taxpayer funding to conduct the election.

4. Plaintiffs also asks this Court – and TGP joins and likewise asks – to find Defendant violated Michigan election law with respect to improper absentee ballot boxes. a viThus, for the reasons and those that follow, Intervening Plaintiff files this Complaint in Intervention to protect itself against irreparable constitutional injury in these proceedings.

5. Intervenor-Plaintiff TGP realleges and incorporate by reference all paragraphs in Plaintiffs' complaint of 5 October, 2020, as though fully set forth herein.

JURISDICTION AND VENUE

6. TGP brings this action under Article I, § 2 and Article 2, § 4 of the Michigan Constitution and MCR 2.605.

7. This Court has jurisdiction over the subject matter of this action pursuant to Michigan Compiled Laws § 600.6419.

8. This Court has personal jurisdiction over the Defendant Secretary of State Jocelyn Benson, who is sued in her official capacity only.

9. Venue is proper in the Court of Claims pursuant to Michigan Compiled Laws § 600.6419, because this is a constitutional and declaratory claim against the Secretary of State.

10. This Court has the authority to enter a declaratory judgment pursuant to Michigan Court Rule 2.605. It has authority to enter an injunction under the Michigan Constitution. *Sharp v City of Lansing*, 464 Mich 792 (2001).

PARTIES

11. Intervenor-Plaintiff TGP is a national online news outlet, with consistently greater online readership than the Wall Street Journal and USA Today. TGP is viewed in excess of 110 million times per month by its readership. In the aftermath of the election, TGP has spent enormous time and resources, assembling a team of reporters from around the nation and transporting them to Michigan for weeks, for the sole purpose of investigating allegations of fraud and other elections improprieties in Michigan. Because traditional media have largely refused to cover these topics due to partisan bias,[1] the public has come to rely heavily upon TGP as a major source of information in these matters. **TGP has reporters who are Michigan citizens and who voted in the fall 2020 general election**. Moreover, TGP has tens of thousands of readers in Michigan who are either eligible to vote or who indeed voted in the recent election as Republicans. These readers, Michigan

[1] **We cannot discount the possibility that much of the media blackout has been due to the Michigan Attorney General's issuance of threats of criminal prosecution to journalists and media outlets reporting on these topics.** *See generally*, https://www.thegatewaypundit.com/2020/11/crazed-vicious-michigan-ag-threatens-criminally-charge-gop-lawmakers-meeting-trump-stolen-election/ (threatening journalists with criminal prosecution) (last accessed December 4, 2020); *see also* https://www.thegatewaypundit.com/2020/11/huge-exclusive-michigan-ag-dana-nessel-sends-cease-desist-order-journalist-demanding-erase-detroitleaks-video-showing-voter-fraud-training-face-criminal-prosecution/ (threatening GOP lawmakers with criminal prosecution) (last accessed December 4, 2020).

voters, are intensely interested in the instant lawsuit, seek access to evidence and to the judicial record, and demand to know whether or not their Constitutional rights were violated and if their Secretary of State was asleep at the switch – *or worse* – when an outside entity funded by a tech billionaire illegally interfered in the Michigan electoral process.

12. Defendant JOCELYN BENSON is the Secretary of State of Michigan and is sued in her official capacity. Secretary Benson is Michigan's chief elections officer and, as such, has "supervisory control over local election officials in the performance of their duties." Mich. Comp. Laws § 168.21. In that role, she is specifically responsible for "[a]dvis[ing] and direct[ing] local election officials as to the proper methods of conducting elections." *Id.* § 168.31(1)(b). Secretary Benson is also tasked with overseeing voter registration, *e.g.*, *id.* §§ 168.496, 168.509o, including the automatic registration of voters who conduct business with her office to obtain a driver's license or state identification card. *Id.* § 168.493a. She, personally and through the conduct of her employees, officers, agents, and servants, acted under color of State law at all times relevant to this action.

COUNT I

Secretary Benson violated the Equal Protection Clause of Michigan's Constitution

13. Michigan's Constitution declares that "[n]o person shall be denied the equal protection of the laws …." Const 1963, art 1, § 2.

14. This clause is coextensive with the United States Constitution's Equal Protection Clause. *Harville v. State Plumbing & Heating* 218 Mich. App. 302, 305- 306; 553 N.W.2d 377 (1996). *See also Bush v. Gore*, 531 U.S. 98, 104 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent

with the Equal Protection Clause of the Fourteenth Amendment.")

15. *Young v. Red Clay Consol. Sch. Dist.,* 122 A.3d 784, 858 (Del. Chan. Ct. 2015), demonstrates the dangers of a government scheme to target get-out-the-vote efforts on a favored demographic group. The school district wanted its referendum to pass; so, it targeted parents of school children and adult students for a get-out-to-vote campaign. In *Young*, the court identified the school district's scheme to get-out-the- vote of the parents and adult students as also violating election law. The court held that the school district's improper influence upon a demographic group interfered with the "full, fair, and free expression of the popular will …." *Id.* The court stated that the government conducting the election in a manner that favored one group of voters was equivalent to the government disfavoring another group of voters.

> Historically, the law has focused on forms of "improper influence" that have interfered with the voting rights of disfavored demographic groups by dissuading or preventing them from voting through blatant means like fraud, violence, and intimidation.
>
> A government certainly violates the Elections Clause if it skews the outcome of an election in this manner. Parity of reasoning suggests that a government can violate the Elections Clause if it skews the outcome of an election by encouraging and facilitating voting by favored demographic groups. In both situations, the government has diminished the voting rights of one portion of the electorate and enhanced the voting rights of another portion of the electorate. In neither case is the election "free and equal." *Id*.

16. The conduct of the election and the allocation of funds necessary to fairly and equally conduct an election must be "apportioned on a population basis." *Reynolds v. Sims,* 377 U.S. 533, 568 (1964). Michigan's allocation of funds necessary to conduct the 2020 general election (as governed and overseen by Secretary Benson) is (similar to the apportionment of legislative districts) subject to the federal Equal Protection Clause. *See id. See also Wesberry v. Sanders,* 376 U.S. 1 (1964), and *Evenwel v. Abbott*, 136 S.Ct. 1120 (2016). The United States Constitution and Michigan's Constitution forbid the Secretary of State and local election officials from selectively benefitting one group of Michigan voters (urban voters in

predominantly Democrat jurisdictions) over another group of Michigan voters (suburban and rural voters in non-Democrat precincts).

17. These Michigan voters seek declaratory and injunctive relief requiring Secretary Benson to prevent local election jurisdictions from accepting millions of dollars paid by CTCL to tilt the playing field to advance a get-out-the-vote effort in only predominantly Democrat jurisdictions. Alternatively, these Michigan voters ask this Court to order Secretary Benson to direct the local election officials who have received these private funds to remit those funds to Secretary Benson and order Secretary Benson to equally distribute the funds to all Michigan election jurisdictions on a *pro rata* basis according to the number of registered voters in each election jurisdiction.

18. Every Michigan voter enjoys an equal right to participate in the 2020 general election. By allowing a privately-funded organization with an announced partisan agenda to fund public election authorities in get-out-the-vote efforts in only predominantly Democrat precincts, Secretary Benson has violated the Michigan Constitution and Michigan election law. Secretary Benson has diminished the voting rights of one group of Michigan citizens (those who are registered to vote in rural and non-Democrat jurisdictions) and enhanced the voting rights of another group of Michigan voters (those living in urban, progressive, and historically Democrat jurisdictions). This unequal treatment of Michigan voters violates the Michigan Constitution's guarantee of equal protection.

19. Secretary Benson's failure to lawfully oversee this election and specifically allowing an ideologically-driven organization to pay private funds to only election jurisdictions in predominantly Democrat precincts cannot be sustained under any applicable level of scrutiny from this Court. This scheme that Secretary Benson has allowed severely burdens these Michigan citizens' right to participate in a fair and honest election.

COUNT II

Secretary Benson violated Michigan voters' rights under the Michigan Constitution's "purity of elections" clause.

20. The Michigan Constitution's "purity of elections" clause states that "the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting." Const. 1963, art 2, §4(2).

21. "The phrase 'purity of elections' does not have a single precise meaning. But it unmistakably requires fairness and evenhandedness in the election laws of this state." *Barrow v. Detroit Election Comm.*, 854 N.W.2d 489, 504 (Mich. Ct. App. 2014).

22. The purity of elections clause has been successfully raised in cases, like this one, where state officials favor one group of voters. *See Fleming v. Macomb Cty. Clerk*, 2008 Mich. App. LEXIS 1325, at *21-24 (Mich. Ct. App. June 26, 2008) ("the purity of elections has been violated in this case because the mailing of absent voter ballot applications to only a select group of eligible absent voters undermines the fairness and evenhandedness of the application of election laws in this state.").

23. The Michigan citizens and voters bringing this action are from precincts that do not have the benefit of private funding paid by CTCL, but instead rely on the state and local budgets providing taxpayer funds to pay for the cost of conducting the election.

24. By allowing selected predominantly urban and Democrat election jurisdictions to receive and spend millions of dollars of private money to conduct the election while Michigan voters in jurisdictions that are rural and suburban and are not predominantly Democrat do not receive the benefit of these additional recourses, Secretary Benson has diminished the voting

rights of one disfavored group of citizens (Michigan voters living in election jurisdictions that are rural and are not predominantly Democrat) and enhanced the access to the ballot for another favored group of voters (those in urban, progressive, and heavily-Democrat jurisdictions). The purity of elections clause forbids Secretary Benson from conducting the election in this manner. Doing so violates Michigan voters' right to equal protection. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966).

25. Intervenor-Plaintiff understands that Democrat politicians generally want to see fellow Democrats elected just as Republican politicians want to see Republicans elected. Intervenor-Plaintiff understands that Secretary Benson is a Democrat and would prefer to see former Vice-President Biden elected President instead of President Trump being reelected. But Secretary Benson has a higher calling – that of assuring that Michigan's general election is conducted according to the provisions of the Michigan Constitution and Michigan law. Absent this, public confidence in the integrity of the election and the legitimacy of whomever is ultimately declared a winner in the general election is undermined. *See Carter-Baker Commission Report*, *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* (September 2005).[12]

26. To be fair and just, Michigan elections must be conducted according to uniform laws and rules that apply equally to all eligible voters and to all election officials, both those from urban and predominantly Democrat jurisdictions as well as to those voters in rural and suburban jurisdictions that are not predominantly Democrat. Secretary of State Benson is charged with the responsibility of assuring Michigan elections are administered equally throughout Michigan. And, when she does not do so, it is the task of this Court to affirm this principle and enjoin conduct of an election that is contrary to the Michigan Constitution and law.

27. Elections are to be paid for with public funds appropriated through the budget process. Elections are not to be paid for with private funds paid by an ideologically-oriented special interest group that, in exchange for paying money to local election jurisdictions, dictates how the money is spent and how the local election officials conduct the election.

COUNT III

Secretary Benson violated Michigan law when she allowed local election jurisdictions to privately fund the election and collect ballots in unauthorized and unsecured ballot containers.

28. Local election jurisdictions are spending private funds paid to them by CTCL to (among other activities) buy and establish ballot drop boxes (colloquially called "Zuckerberg Boxes") to collect absentee and mail-in ballots placed in Democrat- majority jurisdictions.

29. These "Zuckerberg Boxes" do not comply with Michigan law. Michigan strictly regulates the requirement of a "ballot container" to prevent the tampering with ballots and to protect the integrity of every ballot lawfully cast by a Michigan voter. *See, supra*, ¶¶36-42.

30. These Zuckerberg ballot drop-boxes do not satisfy the requirements Michigan law demands for a secure ballot container. *See* Secretary of State's Manual for Boards of County Canvassers chapter VI (Appendix).

31. The "Zuckerberg Boxes" acquired with private funds cannot possibly meet the requirements of MCL 168.24j and, even if they did satisfy the requirements of MCL for a legal "ballot container," they are being disproportionately placed in Democrat precincts and not made equally available throughout the state.

32. Additionally, the City of Lansing and the City of East Lansing used CTCL money to mail applications for absent voter ballots even when the voter did not request an absentee ballot and despite the fact that the City of Lansing and the City of East Lansing have

no legal authority to mail unsolicited absentee ballotapplications to voters who have not requested such an application. *See* **Exhibit 9** (Sarah Lehr, *Lansing, East Lansing Clerks Mail Absentee Ballot Applications to All Registered Voters*, *Lansing State Journal*, September 11, 2020). Local election officials may not send out mass absent voter applications. *See Young*, 122 A.3d at 858.

PRAYER FOR RELIEF

These Michigan citizens and voters ask this Court to:

A. Find that Secretary Benson has violated the Michigan Constitution's Equal Protection Clause and Purity of Elections clause by allowing certain Michigan jurisdictions to accept private funds to pay for the conduct of the general election in only jurisdictions that historically have favored the Democratic Party candidates;

B. Enjoin Secretary Benson from allowing local election jurisdictions to accept private funds from CTCL or any other special interest group;

C. Issue a writ of mandamus ordering Secretary Benson to require that all contributions of private funds received by local election jurisdictions to be returned to the donor, or alternatively, have these private funds paid to the Secretary of State and the Secretary of State distribute these funds on an equal basis to all election jurisdictions on a pro rata basis by the number of registered voters in each jurisdiction;

D. Award these Michigan citizens the costs, expenses, and expert witness fees they incurred in this action as allowed by law; and

E. Grant such other and further relief as this Court deems just and proper.

Dated: December 8, 2020

Respectfully submitted,

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**Pro hac vice motion forthcoming*

VERIFICATION

"I declare under the penalties of perjury that this_____has been examined by me and that its contents are true to the best of my information, knowledge, and belief."

Date: _____
[name]

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**Pro hac vice motion forthcoming*

[12/08/2020] BRIEF IN SUPPORT OF
12/08/2020 MOTION OF TGP TO INTERVENE AS PLAINTIFF

Intervening Plaintiff TGP moves to intervene as a plaintiff in this suit filed by Plaintiffs. Through this lawsuit, Plaintiffs seek to determine whether their Constitutional rights have been violated and whether the Secretary of State has permitted a private entity to interfere with the Michigan 2020 general election, which impairs the distinct and protectable legal interests of TGP reporters (i.e., Michigan citizens and voters) and **tens of thousands** of Michigan TGP readers who voted in the recent election as Republicans or for President Trump.

Intervention is further warranted because TGP is a national news outlet which has carefully and relentlessly covered – *perhaps more than any other entity in America* - election fraud and improprieties related to Michigan's handling of the 2020 general election. To wit, TGP not only has permanent reporters – Michigan citizens and voters – in Michigan, but has maintained a team of journalists from around the nation, on the ground in Michigan investigating these issues.

TGP's readership is steadfastly supportive of President Trump and has a vested interest in learning the truth, not only about election fraud in this election, but also improprieties committed by the Secretary of State. TGP's intervention is warranted to protect the rights of its Michigan citizen voter journalists, the rights of its **tens of thousands** of Michigan citizen voter readers, and also for the purpose of accessing evidence and judicial records generated by Plaintiffs' suit.

Intervention is governed by Michigan Court Rule ("MCR") 2.209:

> (A) **Intervention of Right.** On timely application a person has a right to intervene in an action . . . (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless applicant's interest is adequately represented by existing parties.
>
> (B) **Permissive Intervention.** On timely application a person may intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

"The rule for intervention should be liberally construed to allow intervention where the applicant's

interests may be inadequately represented." *Neal v Neal*, 219 Mich App 490, 492 (1996); see also *State Treasurer v Bences*, 318 Mich App 146, 150 (2016).

Here, TGP readily satisfies the requirements for intervention of right under MCR 2.209(A). MCR 2.209(A)(3) requires "timely application, a showing that the representation of the applicant's interests by existing parties is or may be inadequate, and a determination whether disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect his interests Its motion for intervention follows." *Chvala v Blackmer*, unpublished opinion of the Court of Appeals, issued January 16, 2001 (Docket No 221317), 2001 WL 789526, p *2, (citing *Oliver v State Police Dep't*, 160 Mich App 107, 115 (1987)).

First, its application is timely because it follows within one month of the filing of this suit, before any significant action has been taken. *See, e.g.*, *Karrip v Cannon Tp*, 115 Mich App 726, 731 (1982).

Second, TGP possesses interests that will likely be impaired or impeded by this action. TGP is a national online news outlet whose readership is dedicated to rooting out dishonesty in public offices and processes, and which – along with its tens of thousands of Michigan readers – sincerely believes that Defendant Benson violated the Constitutional rights of the Michigan electorate –specifically the portion of the electorate supporting President Trump. TGP contends that its Michigan citizen Reporter voters and Michigan Reader voters rights will be impacted by the outcome of this suit, which will decide whether or not tech billionaires (like Mark Zuckerberg) from out of state can select a small minority of the voting population which supports **his preferred candidate** which will always be at odds with TGP reporter voters and reader voters.[2] TGP's Michigan reporter voters and reader voters are a highly select portion of the electorate, with a

[2] It's worth noting that Zuckerberg's social media monopolies Facebook and Instagram engage in **MASSIVE CENSORSHIP** of TGP, its reporters, and its readers, and that it has identified Trump voters as a population it wishes to deplatform, disenfranchise, and silence.

highly specific worldview and which TGP **alleges has specifically been targeted for disenfranchisement by the actions of Secretary Benson** (and Zuckerberg, the tech oligarch). Like Plaintiffs, TGP's Michigan Reporters and Readers are Michigan voters who possess the same rights to vote This suit will determine if Intervenor-Plaintiff's rights have been violated, and also the contours of their the rights —including the right to vote and to equal protection.

***Third*, no current party adequately represents TGP's interests.** The current Plaintiffs have not declared a party affiliation. Even if they had, TGP, TGP's Michigan reporter voters and reader voters are a highly select portion of the electorate, with a highly specific worldview and which TGP alleges has specifically been targeted and disenfranchised by the actions of Secretary Benson and Zuckerberg. Benson and Zuckerberg hate Trump and Trump supporters – especially TGP. The allegations in this suit are shocking and consequential: they amount to electoral subversion. Plaintiffs, noble though they may be, do not represent the interests of TGP, or its Michigan reporter/reader voters, **because they have not been specifically targeted for disenfranchisement by Benson and Zuckerberg**. See, e.g., *Estate of Lyle v Farm Bureau Gen Ins Co of Mich*, unpublished opinion of the Court of Appeals, issued September 19, 2019 (Docket No 343358), 2019 WL 4555993, p *7 (affirming intervention and noting that where "concern of inadequate representation of interests . . . . exists, the rules of intervention should be construed liberally in favor of intervention" (quoting *Vestevich v W Bloomfield Twp*, 245 Mich App 759, 762 (2001)).

In the alternative, TGP should be granted permissive intervention under MCR 2.209(B)(2). That rule provides for permissive intervention where a party timely files a motion and the party's "claim or defense and the main action have a question of law or fact in common." MCR 2.209(B)(2). "[T]he trial court has a great deal of discretion in granting or denying [permissive] intervention." *Mason v Scarpuzza*, 147 Mich App 180, 187 (1985); *see also City of Holland v*

Dep't of Nat Res & Envt, unpublished opinion of the Court of Appeals, issued March 1, 2012 (Docket No. 302031), 2012 WL 676356, p *3. As discussed above, TGP's motion is timely, and TGP is entitled to the same voting rights as Plaintiffs.

For the foregoing reasons, TGP respectfully asks this Court to grant its motion to intervene.

Dated: December 8, 2020

Respectfully submitted,

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**Pro hac vice motion forthcoming*

PROOF OF SERVICE

John C. Burns certifies that on the 8th day of December 2020, he served a copy of the above document in this matter on all counsel of record and parties *in proper* via email.

s/ *John C. Burns*
JOHN C. BURNS